

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

RUBEN DARIO GARCIA and GLORIA )  
ESTELA GARCIA )  
Plaintiffs, ) 3:11-cv-0763-LRH-VPC  
v. )  
WELLS FARGO BANK, N.A.; et al., )  
Defendants. ) ORDER

Before the court is plaintiffs Ruben Dario Garcia and Gloria Estela Garcia's ("the Garcias") motion to remand. Doc. #8.<sup>1</sup> Defendants filed an opposition. Doc. #12.

## I. Facts and Procedural History

In August 2005, the Garcias purchased real property through a mortgage note and deed of trust originated by defendant Wells Fargo Bank, N.A. (“Wells Fargo”). Eventually, the Garcias defaulted on the mortgage note and defendants initiated non-judicial foreclosure proceedings.

Subsequently, the Garcias filed a complaint in state court against defendants alleging three causes of action: (1) defective foreclosure; (2) declaratory relief; and (3) injunctive relief. Doc. #3. Defendants removed the action to federal court on the basis of diversity jurisdiction. Doc. #1. Thereafter, the Garcias filed the present motion to remand. Doc. #8.

<sup>1</sup> Refers to the court's docket entry number.

1       **II. Legal Standard**

2           Under 28 U.S.C. § 1441, “any civil action brought in a State court of which the district  
 3 courts of the United States have original jurisdiction, may be removed by the defendant or the  
 4 defendants, to the district court of the United States for the district and division embracing the  
 5 place where such action is pending.” 28 U.S.C. § 1441(a).

6           Removal of a case to a United States district court may be challenged by motion. 28 U.S.C.  
 7 § 1441(c). A federal court must remand a matter if there is a lack of jurisdiction. *Id.* Removal  
 8 statutes are construed restrictively and in favor of remanding a case to state court. *See Shamrock*  
 9 *Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941); *Gaus v. Miles, Inc.*, 980 F.2d 564, 566  
 10 (9th Cir. 1992). On a motion to remand, the removing defendant faces a strong presumption against  
 11 removal, and bears the burden of establishing that removal is proper. *Gaus*, 980 F.2d at 566-67;  
 12 *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403-04 (9th Cir. 1996).

13       **III. Discussion**

14           A district court has original jurisdiction over civil actions where the suit is between citizens  
 15 of different states and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.  
 16 28 U.S.C. § 1332(a). Further, an action based on diversity jurisdiction is “removable only if none of  
 17 the parties in interest properly joined and served as defendants is a citizen of the state in which such  
 18 action is brought.” 28 U.S.C. § 1441(b). Here, defendants argue that there is complete diversity  
 19 between the parties because non-diverse defendant American Securities Company of Nevada  
 20 (“ASC”) is a fraudulently joined defendant whose Nevada citizenship cannot be used to defeat the  
 21 exercise of diversity jurisdiction.

22           A fraudulently joined defendant does not “defeat removal on diversity grounds.” *Ritchey v.*  
 23 *Upjohn Drug Co.*, 139 F.3d 1313, 1318 (9th Cir. 1998). Fraudulent joinder “occurs when a plaintiff  
 24 fails to state a cause of action against a resident defendant, and the failure is obvious according to  
 25 the settled rules of the state.” *Ritchey*, 139 F.3d at 1318; *see also McCabe v. General Foods Corp.*,

1 811 F.2d 1336, 1339 (9th Cir. 1987); *Kruso v. International Tel. & Tel. Corp.*, 872 F.2d 1416,  
2 1426-27 (9th Cir. 1989); *Gasnik v. State Farm Ins. Co.*, 825 F.Supp. 245, 247 (E.D. Cal. 1992). In  
3 determining whether a cause of action is stated against a non-diverse defendant, courts look only to  
4 a plaintiff's pleadings. *Gardner v. UICI*, 508 F.3d 559, 561 n.3 (9th Cir. 2007).

5 Nevada is a notice-pleading jurisdiction which liberally construes pleadings. *Chavez v.*  
6 *Robberson Steel Co.*, 584 P.2d 159, 160 (Nev. 1978). The allegations of a complaint are sufficient  
7 to assert a claim for relief when the allegations "give fair notice of the nature and basis" for a claim.  
8 *Vacation Village, Inc. v. Hitachi Am., Ltd.*, 874 P.2d 744, 746 (Nev. 1994).

9 In their complaint, the Garcias challenge the foreclosing defendants' ability to enforce any  
10 loan documents secured by the underlying real property as well as the process by which defendants  
11 initiated the foreclosure proceedings. Specifically, the Garcias allege that defendant ASC did not  
12 comply with the Nevada recording requirements and was not acting as an agent for the beneficiary  
13 in violation of Nevada law. Therefore, based on the allegations in the complaint, the court finds that  
14 non-diverse defendant ASC is not a fraudulently joined defendant. As such, there is not complete  
15 diversity between the parties. Accordingly, the court finds that the exercise of diversity jurisdiction  
16 is inappropriate.

17  
18 IT IS THEREFORE ORDERED that plaintiffs' motion to remand (Doc. #8) is GRANTED.  
19 The clerk of court shall REMAND this action to the Second Judicial District Court for the State of  
20 Nevada.

21 IT IS SO ORDERED.

22 DATED this 17th day of May, 2012.



23  
24 LARRY R. HICKS  
25 UNITED STATES DISTRICT JUDGE  
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